

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 17078 of 2005(G)

PETITIONER:

SMT. SUMA A., W/O.DR.SURA SREEJATHAN,
AGED 38 YEARS, KOCHI VEEDU, THAMARAKULAM, KOLLAM.

BY ADV. SMT.V.P.SEEMANDINI
SRI.T.R.RAJESH

RESPONDENTS:

1. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, P.S.C. OFFICE,
PATTOM, TRIVANDRUM.
2. THE CHIEF CHEMICAL EXAMINER,
CHEMICAL EXAMINERS LABORATORY, TRIVANDRUM.
3. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
HOME DEPARTMENT, SECRETARIAT, TRIVANDRUM.
4. INDU CHANDRAN.R., SREEKANTAVILASAM
DHANAUVACHAPURAM P.O.
THIRUVANANTHAPURAM - 695 03
5. BIJU.V. CHIEF CHEMICAL EXAMINER TO GOVT.
OFFICE OF THE CHEMICAL EXAMINERS LABORATORY
THIRUVANANTHAPURAM
6. BIJU.D
REGIONAL CHEMICAL EXAMINER'S LABORATORY
CALICUT

R2 & 3 BY GOVERNMENT PLEADER SHRI. LAKSHMI NARAYANAN
R1 BY ADV SRI.ALEXANDER THOMAS,SC,KPSC
SRI.K.JAJU BABU
SRI.RAM MOHAN.G.
SRI.G.P.SHINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN W.P(C) 17078/05

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE RANKED LIST DT. 14.2.2003 FOR THE POST OF JUNIOR SCIENTIFIC OFFICER PUBLISHED BY THE PSC

EXT.P2: -DO- OF THE ADDENDUM NOTIFICATION NO: SSIV/JSO/CEL/03 DT. 1.1.2004 ISSUED BY THE PSC

EXT.P3: -DO- OF THE G.O.(MS) NO: 24/04/HOME DT. 21.7.2004

EXT.P4: -DO- OF THE LETTER DT. 16.1.2006 ISSUED BY THE P.S.C.

EXT.P5: -DO- OF THE NOTIFICATION DT. 23.3.1999 ISSUED BY THE P.S.C.

EXT.P6: -DO- OF THE FOURTH RANK LIST DT. 21.10.1989

EXT.P7: -DO- OF THE RELEVANT PAGES OF THE KPSC MANUAL

RESPONDENTS' EXTS:

EXT.R1A: TRUE COPY OF THE RANKED LIST PUBLISHED BY THE PUBLIC SERVICE COMMISSION ON 21.8.89

EXT.R4(A) A TRUE COPY OF THE ADVICE MEMO DT. 16.1.2006 ISSUED BY THE FIRST RESPONDENT

EXT.R5A: -DO- OF THE POST GRADUATE CERTIFICATE IN ANALYTICAL CHEMISTRY ISSUED TO THE 5TH RESPONDENT BY THE KERALA UNIVERSITY DT. 6.12.1999

EXT.R5B: -DO- OF THE FIRST CLASS GRADUATE IN APPLIED CHEMISTRY CERTIFICATE ISSUED TO THE 6TH RESPONDENT BY THE M.G. UNIVERSITY DT. 31.8.1994

EXT.R5C: -DO- OF THE ADVICE MEMO ISSUED BY THE 1ST RESPONDENT TO THE 5TH RESPONDENT DT. 4.3.2004

EXT.R5D: -DO- OF RELIEVING ORDER NO: STL. 80/04 DT. 26.5.04 ISSUED BY THE ASST. SOILD CHEMIST TO THE 5TH RESPONDENT

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/TRUE COPY/

P.S. TO JUDGE

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 17078 OF 2005-G

JUDGMENT

The petitioner was a candidate included in Ext.P1 rank-list published by the Public Service Commission for appointment to the post of Junior Scientific Assistant in the Chemical Examiner's Laboratory under the Government of Kerala. She was rank No.10 and she belonged to Ezhava community. She was the first candidate in the rank-list from that community. This writ petition was filed on 6.6.2005 when she felt that the rotation was not properly applied for appointment to the above said post. If the same was applied correctly, she submits, the first Ezhava candidate should have been advised by that time. She had also a grievance that a number of posts in the direct recruitment quota were occupied by the promotees. Highlighting these two grievances, the writ petition was initially filed. Ext.P1 rank-list was published on 14.2.2003. Later, the said rank-list was modified by publishing Ext.P2 on 1.1.2004. The qualifications notified for the post as per Ext.P5 notification were M.Sc Chemistry or M.Sc Forensic Science or M.Sc Bio-chemistry. Later, the

P.S.C decided to accept M.Sc Applied Chemistry, M.Sc Analytical Chemistry, M.Sc Organic Chemistry and M.Sc Inorganic Chemistry also as equivalent qualifications for the said post. Based on that decision, Ext.P2 list was published, modifying Ext.P1. Later, the petitioner amended the writ petition, incorporating the challenge against Ext.P2 also. She also impleaded the persons likely to be affected, as additional respondents in the writ petition.

2. The main contention raised by the petitioner is that once a qualification is notified by the P.S.C, the candidates having the notified qualification alone shall be considered and included in the rank-list. In the absence of fresh notification and invitation of applications, the existing rank-list cannot be modified, by including candidates with some other qualifications. The second grievance of the petitioner is that the communal rotation was not properly applied. Altogether 13 candidates were advised from the rank-list. Eight candidates were advised from the open competition quota and five from different communities. As per the application of rotation, the turn for advice began at MRI 22, as per the Annexure under Rule 15 of K.S. & S.S.R. MRI 28 turn was an Ezhava turn. That was temporarily passed over, to keep 50% Rule and later, the said vacancy was filled up by an SC candidate. According to the P.S.C., during the previous

selection, the MRI 4 turn for SC was filled up by an Ezhava candidate. But, according to the petitioner, that turn went to an LC candidate, as per the 1983 selection. It was the first selection which took place after the recasting of the roster in 1979. The petitioner has also got a case that she would have been advised, if Ext.P1 has not been modified by Ext.P2.

3. The P.S.C has filed a counter affidavit in the unamended writ petition, in which it is submitted that after the publication of the rank-list, the Commission decided to accept certain qualifications, namely, M.Sc in Applied Chemistry, Analytical Chemistry, Organic Chemistry and Inorganic Chemistry as equivalent qualification for the post and therefore, Ext.P2 list was published, including candidates with the above qualifications. It is also submitted that MRI 28 Ezhava turn was temporarily passed over and the said turn was later allotted to the SC passed over turn, which was earlier filled up by an Ezhava candidate.

4. The petitioner filed a reply affidavit, disputing the above claim of the P.S.C. Therefore, the P.S.C has filed an additional counter affidavit, in which the details of the turn have been given at para 8. It is submitted that the turn this time started at MRI 22 Latin Catholic/Anglo-Indian and rank No.9 LC candidate was advised. As MRI 23 Open Competition candidate, rank No.1 was advised. In MRI 24 SC vacancy, rank No.1 in the

supplementary list of SC was advised. MRI 25 was an OC candidate (Rank No.2). MRI 26 Muslim turn was temporarily passed over to keep 50% Rule. MRI 27 OC advice went to rank No.3. MRI 28 Ezhava was passed over temporarily to keep 50% Rule regarding reservation. MRI 29 OC vacancy was filled up by rank No.2A. MRI 30 Muslim turn was again temporarily passed over to keep 50% reservation Rule. MRI 31 OC vacancy went to rank No.3A. MRI 32 SC turn was temporarily passed over, in view of the 50% Rule. MRI 33 OC went to rank No.4. MRI 34 Ezhava turn was temporarily passed over to keep 50% Rule. MRI 35 OC went to rank No.5 (Sudhakaran).

5. MRI 28 Ezhava turn was filled up by advising MRI 4 SC candidate. 'No candidate available vacancy' of SC went to Ezhava quota during the previous selection. Since the said SC candidate did not report, another candidate (Vindukala K.T.) who was rank No.3 in the supplementary list of SC was advised. MRI 36 Muslim turn was temporarily passed over to keep 50% Rule and MRI 37 OC candidate (Indu Chandran), who was rank No.6 in the rank-list was advised. With the said advice, the rank-list expired on 13.3.2006. According to the P.S.C., advice was made as per the roster correctly.

6. The contesting respondents have also filed a counter affidavit,

supporting their advice. They also submit that even assuming there is some irregularity in the publication of Ext.P2, the petitioner is not affected by the same. No person who was included as per Ext.P2 in the rank-list has been advised in the Ezhava turn. The petitioner's turn as per the open competition did not arise also. Therefore, the petitioner cannot be said to be aggrieved by Ext.P2, it is submitted.

7. Heard the learned counsel on both sides. The respective counsel reiterated the aforementioned contentions urged on their behalf. The learned senior counsel Smt.V.P.Seemanthini who appeared for the writ petitioner also relied on the decision of this Court in **Public Service Commission v. Anitha** [2007(3) KLT 979]. The said decision says, if a turn is temporarily passed over to maintain the 50% reservation Rule and an open competition candidate is advised, the next reservation vacancy should go to the turn which has been temporarily passed over.

8. It is well settled position in law that once the P.S.C notifies a qualification for a post, persons with different qualifications cannot be considered or included in the rank-list. If such a procedure is followed, there may be several candidates who may be having the qualification which the P.S.C has decided to accept, though not notified as per the notification.

So, there is some irregularity in the preparation and publication of Ext.P2. But, if the same has not, in any way, affected the petitioner, it is unnecessary for this Court to interfere with the same. As an open competition candidate, the petitioner would not have been advised, even if Ext.P2 was not there, as her rank is 10. None of the candidates inducted before the petitioner in the rank-list in Ext.P2 was advised in the Ezhava turn. Though there was an Ezhava candidate, he was advised in the OC quota. If that candidate was not there, some other OC candidate would have been advised. Therefore, the petitioner has not been adversely affected by Ext.P2. So, it is unnecessary for this Court to interfere with Ext.P2 at the instance of the writ petitioner.

9. The next point to be considered is whether the rotation Rule has been applied properly. The Ezhava turn arose at MRI 28 E. But, it was passed over temporarily to keep the 50% Rule. Then MRI 29 turn was advised by accommodating an OC candidate. Going by the decision, the next vacancy should have gone to an Ezhava candidate. But, there was another Muslim candidate, who was temporarily passed over at MRI 26, to keep the 50% Rule. So, the next turn MRI 30 was filled up by advising MRI 26 Muslim passed over candidate. MRI 31 turn went to an OC candidate. The next OC vacancy should go to Ezhava for the MRI 28 E

passed over turn. But that vacancy was filled up by MRI 4 SC candidate, which went to Ezhava community, according to the P.S.C. The writ petitioner raises a serious dispute regarding this allocation. According to her, MRI 4 SC turn went to the LC community and therefore, the Ezhava community was not liable to compensate the said turn. This submission is made in the reply affidavit filed in answer to the first counter affidavit of the P.S.C. But, in the additional counter affidavit filed by the P.S.C., the P.S.C. reiterates that the MRI 4 SC turn went to the Ezhava community. In view of the above dispute on this point, this Court should normally go by the assertion made by the P.S.C. There is no reason to disbelieve the statement of the P.S.C. It has no malice towards the petitioner or bias in favour of other candidates. With the materials on record, this Court cannot decide under Article 226 of the Constitution of India, whether the assertion of the petitioner is correct. If the MRI 4 SC turn after the rotation started in 1983, went to an Ezhava candidate, there is nothing wrong with the advices made by the P.S.C.

In the result, the writ petition fails and it is dismissed.

1st December, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

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